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November 4, 1999

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Dear #####:

This is in response to your letter dated October 7, 1999, requesting the Bureau's opinion on whether a "product enhancement" offered by ##### to allow a customer to grant a security interest in his or her real property as additional security for a customer's installment sale contract (hereinafter, contract) under the Motor Vehicle Sales Finance Act (MVSFA) would be subject to certain regulatory requirements. By securing the installment sale contract with residential real property, you state that the customer may be able to take a federal tax deduction for the amount of interest paid under the contract.

You state that the process of the installment sale and credit approval will not be changed under the product enhancement. After the customer signs the contract, it will be assigned to #####. ##### will then offer the customer the opportunity to provide a mortgage on residential real property as additional security for the contract. If the customer chooses the product enhancement, ##### will not distribute additional funds. You state that you believe that offering the product enhancement does not subject ##### to additional regulatory requirements, i.e., regulations and statutes (Secondary Mortgage Loan Act, the Mortgage Brokers, Lenders and Servicers Licensing Act, and the Anti-Redlining Act) applicable to mortgage loans.

Your questions about additional regulatory requirements arise only if it is determined that the MVSFA permits #####, in its capacity as an assignee-holder, to amend an existing contract to allow ##### to take a lien against the buyer's residential real property as additional security for the contract.

You state that the MVSFA provides that a buyer may give a security interest in a motor vehicle and also in real or personal property other than the motor vehicle. In support of this conclusion, you cite MCL § 492.102.16 and MCL § 492.113(3). Section 2 of the MVSFA, MCL § 492.102.16, in pertinent part, defines "collateral security" as follows:

“ ‘Collateral security’ means security, other than a security interest in a motor vehicle which is the subject of an installment sale

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contract, which is given to secure performance of an obligation of the buyer . . . . The term includes . . . . any interest in, encumbrance on, or pledge of real or personal property other than the motor vehicle which is the subject of the installment sale contract.”

Section 13(3), MCL § 492.113(3), states as follows:

“An installment sale contract shall state clearly any collateral security taken for the buyer’s obligation under the contract.”

In addition to these statutory provisions, section 13(5), MCL § 492.113(5), states as follows:

“An installment sale contract shall contain specific provisions as to the buyer’s liability respecting default charges, repossession, and sale of the motor vehicle in case of default or other breach of contract, and respecting the collateral security, if any.”

Section 13(5) refers to the buyer’s liability in the event of default or other breach of contract relative to the motor vehicle and “the collateral security, if any.” The MVSFA defines collateral security to include real property, and it requires that the contract specifically provide for remedies in the event of default available to a holder relative to any collateral security. Although the MVSFA does not expressly authorize an installment seller (seller) to take a lien against real property, it is reasonable to conclude, based on the above statutory provisions, that a seller may take a lien against real property in connection with the installment sale of a motor vehicle.

Returning to the threshold question, does the MVSFA permit #####, as assignee, to amend an existing contract by adding collateral security in the form of a lien against real property? Section 12(a) and (b), MCL § 492.112(a) – (b), states as follows:

“(a) An installment sale contract shall be in writing and shall contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold, and shall be signed by both the buyer and the seller.

(b) An installment sale contract shall be completed as to all essential provisions prior to the signing of such contract by the buyer, and shall contain such other information as the administrator may require.”

These provisions require a contract to be comprehensive, i.e., it must “contain all of the agreements between the buyer and seller relating to the installment sale of the motor

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vehicle sold” and contain “all essential provisions” before it is signed by the buyer. The form of property securing a contract would be an essential provision, subject to section 12(b). Clearly, the contract must contain any security interest taken by the seller before it is signed and later assigned to a licensed finance company.

Section 19(a), MCL § 492.119(a) enumerates the ways in which the holder may modify a contract. Section 19(a), provides as follows:

“Sec. 19. (a) The holder of an installment sale contract may extend the scheduled due date, defer a payment or payments, or renew the unpaid time balance of the contract.”

The MVSFA does not expressly authorize a holder to which a contract is assigned to amend the contract to take a security interest in real property.

In addition, I am compelled to note that the described contract amendment would be ineffective. As described, there is no consideration offered by ##### for the customer’s grant of a security interest in his or her real property. The only benefit given the customer would be the possibility to claim a suspect interest deduction. ##### would not provide this benefit and therefore, is not providing any bargained-for consideration. If the benefit existed, it would flow from the Internal Revenue Service, not #####.

I must conclude, therefore, that the MVSFA does not authorize ##### to amend an assigned installment sale contract by taking a security interest in the buyer’s real property.

In view of the conclusion, I offer no responses to the questions relating to the applicability of “certain regulatory requirements.”

Questions regarding this letter should be directed to Ann Gaultney, Director of the Examination Division.

Sincerely,

/ ss /

Gary K. Mielock  
Acting Commissioner

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